

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ROMAN FRANCO,

Plaintiff,

v.

CHRISTMAS BY KREBS,

Defendant.

**NOTICE OF REMOVAL OF CIVIL ACTION**

**TO: THE CLERK FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO:**

PLEASE TAKE NOTICE that Defendant Christmas By Krebs (“Defendant”) hereby removes the above-entitled action from the Fifth Judicial District Court, Chaves County, New Mexico, to the United States District Court for the District of New Mexico on the grounds that this Court has original jurisdiction under 28 U.S.C. § 1331, and this action is one that may be removed to this Court by Defendant pursuant to 28 U.S.C. §§ 1441 and 1446. Defendant respectfully submits the following statement of grounds for removal on the basis of this Court’s federal question jurisdiction.

1. Plaintiff filed his complaint in the action *Roman Franco vs. Christmas By Krebs* in the Fifth Judicial District, Chaves County, New Mexico, Case No. D-504-CV-2018-01240 (the “Complaint” filed in the “State Court Action”) on November 1, 2018. A true and correct copy of the Complaint is attached hereto as **Exhibit 1**.

2. On November 6, 2018, Plaintiff served the Complaint on Christmas By Krebs. A true and correct copy of all filings received by the Defendant in the State Court Action in addition to the Complaint is attached hereto as **Exhibit 2**.

3. This Court has original jurisdiction under 28 U.S.C. § 1331 because Plaintiff has alleged a federal question. Specifically, Plaintiff's Complaint purports to state a cause of action under the Americans with Disabilities Act, 42 U.S.C. § 12101. Thus, the Complaint itself, although filed in New Mexico state court, invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1331. "A case arise[s] under federal law within the meaning of § 1331 . . . if a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 689–90 (2006). Accordingly, this matter is removable under 28 U.S.C. § 1441(a).

4. To the extent the Complaint includes state law claims, such claims would necessarily be based on the same operative facts as Plaintiff's federal claim. Therefore, this Court has supplemental jurisdiction over any state law claims arguably pled pursuant to 28 U.S.C. § 1367, and those claims properly are removable under 28 U.S.C. § 1441(c).

5. Notice of this removal is effected properly and timely pursuant to 28 U.S.C. § 1446(b)(1) as it is filed within 30 days after Defendants were served with the Summons and Complaint in the Action.

6. Based on the foregoing, this Action is properly removed to this Court.

7. Defendant has given written notice of this removal to all adverse parties, in accordance with 28 U.S.C. § 1446(d). A copy of the Notice to Adverse Party of Removal of Civil Action to Federal Court in the Fifth Judicial District of Chaves County, New Mexico is attached as **Exhibit 3**.

8. Defendants filed the Notice to State Court of Removal of Civil Action in

the Fifth Judicial District of Chaves County, New Mexico and served Plaintiff with the Notice, in accordance with 28 U.S.C. § 1446(d). A copy of the Notice to State Court of Removal of Civil Action is attached as **Exhibit 4**.

RESPECTFULLY SUBMITTED this 3rd day of December, 2018.

Respectfully submitted,

LITTLER MENDELSON, P.C.

/s/ Charlotte Lamont

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ATTORNEYS FOR DEFENDANT

I hereby certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following if CM/ECF registrants, and emailed a copy of same to any non-registrants this 3rd day of December, 2018:

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/s/ Charlotte Lamont

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